

Introduced by Senator PoochigianFebruary 23, 2006

An act to amend Section 667.61 of the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

SB 1565, as introduced, Poochigian. Sentencing.

Existing law provides for sentence enhancements for persons convicted of certain offenses under specified circumstances.

This bill would make a technical, nonsubstantive change to those provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 667.61 of the Penal Code is amended to
2 read:
3 667.61. (a) ~~A~~ Any person who is convicted of an offense
4 specified in subdivision (c) under one or more of the
5 circumstances specified in subdivision (d) or under two or more
6 of the circumstances specified in subdivision (e) shall be
7 punished by imprisonment in the state prison for life and shall
8 not be eligible for release on parole for 25 years except as
9 provided in subdivision (j).
10 (b) Except as provided in subdivision (a), a person who is
11 convicted of an offense specified in subdivision (c) under one of
12 the circumstances specified in subdivision (e) shall be punished
13 by imprisonment in the state prison for life and shall not be

1 eligible for release on parole for 15 years except as provided in
2 subdivision (j).

3 (c) This section shall apply to any of the following offenses:

4 (1) A violation of paragraph (2) of subdivision (a) of Section
5 261.

6 (2) A violation of paragraph (1) of subdivision (a) of Section
7 262.

8 (3) A violation of Section 264.1.

9 (4) A violation of subdivision (b) of Section 288.

10 (5) A violation of subdivision (a) of Section 289.

11 (6) Sodomy or oral copulation in violation of Section 286 or
12 288a by force, violence, duress, menace, or fear of immediate
13 and unlawful bodily injury on the victim or another person.

14 (7) A violation of subdivision (a) of Section 288, unless the
15 defendant qualifies for probation under subdivision (c) of Section
16 1203.066.

17 (d) The following circumstances shall apply to the offenses
18 specified in subdivision (c):

19 (1) The defendant has been previously convicted of an offense
20 specified in subdivision (c), including an offense committed in
21 another jurisdiction that includes all of the elements of an offense
22 specified in subdivision (c).

23 (2) The defendant kidnapped the victim of the present offense
24 and the movement of the victim substantially increased the risk
25 of harm to the victim over and above that level of risk necessarily
26 inherent in the underlying offense in subdivision (c).

27 (3) The defendant inflicted aggravated mayhem or torture on
28 the victim or another person in the commission of the present
29 offense in violation of Section 205 or 206.

30 (4) The defendant committed the present offense during the
31 commission of a burglary, as defined in subdivision (a) of
32 Section 460, with intent to commit an offense specified in
33 subdivision (c).

34 (e) The following circumstances shall apply to the offenses
35 specified in subdivision (c):

36 (1) Except as provided in paragraph (2) of subdivision (d), the
37 defendant kidnapped the victim of the present offense in
38 violation of Section 207, 209, or 209.5.

39 (2) Except as provided in paragraph (4) of subdivision (d), the
40 defendant committed the present offense during the commission

1 of a burglary, as defined in subdivision (a) of Section 460, or
2 during the commission of a burglary of a building, including any
3 commercial establishment, which was then closed to the public,
4 in violation of Section 459.

5 (3) The defendant personally inflicted great bodily injury on
6 the victim or another person in the commission of the present
7 offense in violation of Section 12022.53, 12022.7, or 12022.8.

8 (4) The defendant personally used a dangerous or deadly
9 weapon or firearm in the commission of the present offense in
10 violation of Section 12022, 12022.3, 12022.5, or 12022.53.

11 (5) The defendant has been convicted in the present case or
12 cases of committing an offense specified in subdivision (c)
13 against more than one victim.

14 (6) The defendant engaged in the tying or binding of the
15 victim or another person in the commission of the present
16 offense.

17 (7) The defendant administered a controlled substance to the
18 victim by force, violence, or fear in the commission of the
19 present offense in violation of Section 12022.75.

20 (f) If only the minimum number of circumstances specified in
21 subdivision (d) or (e) which are required for the punishment
22 provided in subdivision (a) or (b) to apply have been pled and
23 proved, that circumstance or those circumstances shall be used as
24 the basis for imposing the term provided in subdivision (a) or (b)
25 rather than being used to impose the punishment authorized
26 under any other law, unless another law provides for a greater
27 penalty. However, if any additional circumstance or
28 circumstances specified in subdivision (d) or (e) have been pled
29 and proved, the minimum number of circumstances shall be used
30 as the basis for imposing the term provided in subdivision (a),
31 and any other additional circumstance or circumstances shall be
32 used to impose any punishment or enhancement authorized under
33 any other law. Notwithstanding any other law, the court shall not
34 strike any of the circumstances specified in subdivision (d) or (e).

35 (g) The term specified in subdivision (a) or (b) shall be
36 imposed on the defendant once for any offense or offenses
37 committed against a single victim during a single occasion. If
38 there are multiple victims during a single occasion, the term
39 specified in subdivision (a) or (b) shall be imposed on the
40 defendant once for each separate victim. Terms for other offenses

1 committed during a single occasion shall be imposed as
2 authorized under any other law, including Section 667.6, if
3 applicable.

4 (h) Probation shall not be granted to, nor shall the execution or
5 imposition of sentence be suspended for, any person who is
6 subject to punishment under this section for any offense specified
7 in paragraphs (1) to (6), inclusive, of subdivision (c).

8 (i) For the penalties provided in this section to apply, the
9 existence of any fact required under subdivision (d) or (e) shall
10 be alleged in the accusatory pleading and either admitted by the
11 defendant in open court or found to be true by the trier of fact.

12 (j) Article 2.5 (commencing with Section 2930) of Chapter 7
13 of Title 1 of Part 3 shall apply to reduce the minimum term of 25
14 years in the state prison imposed pursuant to subdivision (a) or
15 15 years in the state prison imposed pursuant to subdivision (b).
16 However, in no case shall the minimum term of 25 or 15 years be
17 reduced by more than 15 percent for credits granted pursuant to
18 Section 2933, 4019, or any other law providing for conduct credit
19 reduction. In no case shall any person who is punished under this
20 section be released on parole prior to serving at least 85 percent
21 of the minimum term of 25 or 15 years in the state prison.